

**REMARKS**

Claims 1-17 and 47 are pending in the present application. Claims 1-17 and 47 have been rejected by the Examiner.

The Applicant refers back to the remarks filed on August 1, 2007, and incorporates them by reference in the interests of brevity. The Applicant maintains those arguments are correct and show a distinction between the pending claims and the cited art of record. However, the Applicants provide some additional comments herein in hopes of clarification for the Examiner.

Claims 1-12, 14, 17 and 47 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Wong (U.S. Patent N. 6,260,021) in view of Moshfeghi (U.S. Patent No. 6,076,166) and the article “Integrating PACS Power” by Edmund X. DeJesus.

As previously discussed, Wong is actually ***focused*** on a broker-based system, building a foundation upon the established CORBA (Common Object Request **Broker** Architecture). See, e.g., throughout the Wong reference including Abstract, Figures 1-4, col. 6, lines 11-60, col. 7, line 38 – col. 8, line 52, col. 9, line 38 – col. 10, line 47, etc. Wong uses a series of distributed ***broker*** components “in enabling the other objects of the system

to make requests and receive responses in a distributed environment.” See, e.g., col. 9, lines 38-41. Wong further specifies that the *broker* handles negotiation between communication protocols, network structures, etc., so that “objects do not need to be aware of any communication details or network structure.” See, e.g., col. 9, lines 43-45. Using broker-based CORBA interface engines CIIE and CRIE, Wong uses a heavily broker-based distributed architecture for medical image distribution.

The Office Action at page 3 acknowledges that Wong does not disclose a RIS database and a PACS database residing on the same database server. The Office Action instead indicates that such a feature is well known in the art and cites Moshfeghi as evidence.

Moshfeghi focuses on a distributed system allowing personalized web access. Computer-based patient records may be retrieved based on certain rules from one or more of a PACS database, a HIS data, a RIS database, etc. Moshfeghi specifies that all of these databases are capable of being searched, filtered and processed but **does not** specify that multiple databases are contained in one database server. See, e.g., Figure 1 and col. 2, lines 49-54. In fact, the distributed emphasis of Moshfeghi and specific reference to databases 24 on the server 12 and other databases 30 external to but accessible by the server 12 in the distributed network 10 suggests that the

RIS and PACS databases of Moshfeghi, assuming an embodiment where both are present, ***do not in fact*** reside on a database server. Moshfeghi does not therefore teach or suggest a RIS database and a PACS database residing on the same database server.

While it appears that a thorough and detailed search of the prior art was completed, the search did not yield a single reference that could be cited to as teaching a RIS database and a PACS database residing on the same database server. Because the subject matter of the claim limitation is not of such “notorious character” that it is “capable of instant and unquestionable demonstration as being well-known,” official notice cannot be taken under MPEP § 2144.03. Specifically, the MPEP states:

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or **specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.** In re Ahlert, 424 F.2d at 1091, 165 USPQ at 420-21. See also In re Grose, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) (“[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory.”); In re Eynde, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) (“[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational

disagreement among reasonable men and are not amenable to the taking of such notice.").

**It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.** Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." Id. at 1385-86, 59 USPQ2d at 1697. As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. Id. at 1385, 59 USPQ2d at 1697. \*\*

MPEP, § 2144.03 (emphases added). Accordingly, Applicants request that the Office provide a reference(s) to support the Office's position if the Office intends to maintain any rejection based on the assertion that such a feature is well known.

Additionally, as pointed out in the Office Action at page 4, Moshfeghi, like Wong, fails to disclose a brokerless interface as recited in independent claims 1 and 47. The Office Action instead indicates that such a feature is well known in the art and cites DeJesus as evidence.

DeJesus generally refers to integrating a PACS and a RIS. DeJesus does not teach or suggest a database engine residing on the same database server as a RIS database and a PACS database, wherein the database engine is configured to provide a brokerless interface between the RIS database and the PACS database allowing RIS functions and PACS functions to directly access each other at a database level without use of a broker. Rather, the DeJesus article makes reference to using middleware standards like CORBA (Common Object Request **Broker** Architecture) when linking legacy systems. (DeJesus at paragraph 7.) To the extent DeJesus teaches integrating a RIS and a PACS using middleware standards like CORBA, DeJesus teaches away from the claimed inventions, which require a brokerless interface. See MPEP § 2141.02: “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” Further, the example implementation of an integrated RIS and PACS does not indicate that the claimed configurations were, or could have been, used. DeJesus does not, therefore, teach or suggest the claimed configurations, and in fact teaches away from the claimed inventions.

While it appears that a thorough and detailed search of the prior art was completed, the search did not yield a single reference that could be cited

to as teaching “a database engine residing on said database server to manage said RIS database and said PACS database by providing a brokerless interface between said RIS database and said PACS database allowing RIS functions and PACS functions to directly access each other at a database level without use of a broker.” Because the subject matter of the claim limitation is not of such “notorious character” that it is “capable of instant and unquestionable demonstration as being well-known,” official notice cannot be taken under MPEP § 2144.03. Accordingly, Applicants request that the Office provide a reference(s) to support the Office’s position if the Office intends to maintain any rejection based on the assertion that such a feature is well known.

In summary, the systems of the presently pending claims recite RIS and PACS databases *jointly residing* on a database server in an *integrated*, rather than distributed, RIS-PACS system environment. In the claimed apparatus, RIS and PACS functions are allowed to directly access each other at the database level. When the systems interface in this integrated system, no translation or broker is needed (hence the *brokerless* interface).

Combining the three references fails to reasonably disclose an integrated RIS-PACS database environment on a database server, as claimed. Additionally, combining three broker-based systems fails to

disclose a brokerless interface, let alone a brokerless interface between integrated database components. As such, the disclosure of the cited art is clearly distinct and inapposite of the presently pending claims.

With respect to the dependent claims, the reasons described above with respect to independent claim 1 also apply to dependent claims 2-17. Additionally, for example, none of the cited references disclose a system in which operation can be configured in any one of three modes including RIS only, PACS only, and fully integrated RIS-PACS. Dependent claims 6 and 7 reflect some of these configurations and are not disclosed by the cited art of record. Independent claim 47 also reflects these various configurations in the brokerless environment of claim 1.

Claims 13 and 16 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Wong, Moshfeghi, and DeJesus further in view of Crane (U.S. Patent No. 5,748,907). Crane discloses neither a PACS nor a RIS. Further, Crane discloses nothing regarding a database engine providing a brokerless interface between a PACS and a RIS. Thus, the disclosure of Crane does nothing to cure the deficiencies of Wong, Moshfeghi, and DeJesus with respect to independent claim 1, from which claims 13 and 16

depend. Therefore, the Applicant respectfully submits that claims 13 and 16 should also be allowable over the cited art of record.

Claim 15 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Wong, Moshfeghi, and DeJesus further in view of Segal (U.S. Pat. Pub. No. 2001/0041991A1). However, Segal does not disclose a system with both a PACS and a RIS. Further, Segal discloses nothing regarding a database engine providing a brokerless interface between a PACS and a RIS. Thus, the disclosure of Segal also does nothing to cure the deficiencies of Wong, Moshfeghi, and DeJesus with respect to independent claim 1, from which claim 15 depends. Therefore, the Applicant respectfully submits that claim 15 should also be allowable over the cited art of record.

The Office Action at page 13 indicates that “one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.” However, Applicants maintain that none of the cited references, whether taken alone or in combination, teach or suggest at least the following elements as recited in the claims: (1) a RIS database and a PACS database residing on the same database server; (2) a



database engine on the database server configured to provide a brokerless interface between the RIS database and the PACS database allowing RIS functions and PACS functions to directly access each other at a database level without use of a broker; and/or (3) a system in which operation can be configured in any one of three modes including RIS only, PACS only, and fully integrated RIS-PACS.

For at least the foregoing reasons, claims 1-17 and 47 of the present application are allowable over the cited art of record.

### **CONCLUSION**

The Applicants submit that the claims of the present application define allowable subject matter. If the Examiner has any questions or if the Applicants can be of any assistance, the Examiner is invited and encouraged to contact the Applicants' undersigned attorney at (312) 775-8096.

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of GEMS-IT, Account No. 504540.

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